

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

MICHAEL BENJAMIN WOLFE, M.D.)

Physician's and Surgeon's)

Certificate No. A 63089)

Respondent)

Case No. 800-2016-028734

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 13, 2019.

IT IS SO ORDERED: May 14, 2019.

MEDICAL BOARD OF CALIFORNIA



**Michelle Anne Bholat, M.D., Vice Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 State Bar No. 116564
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7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2016-028734

13 **MICHAEL BENJAMIN WOLFE, M.D.**
14 50 Saratoga Ave. #409
Santa Clara CA 95051-7387

OAH No. 2019010211

15 Physician's and Surgeon's Certificate No. A
16 63089

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Jane Zack Simon,
24 Supervising Deputy Attorney General.

25 2. Respondent Michael Benjamin Wolfe, M.D. (Respondent) is represented in this
26 proceeding by Jane Luciano, Luciano Health Law, 9000 Crow Canyon Road Suite S 168,
27 Danville, CA 94506.
28

3. On July 18, 1997, the Board issued Physician's and Surgeon's Certificate No. A 63089 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-028734, and will expire on November 30, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-028734 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent, who timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2016-028734 is attached as Exhibit A.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-028734. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2016-028734 and that he has thereby subjected his Physician's and Surgeon's Certificate to disciplinary action.

9. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2016-028734 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 63089 issued to Respondent Michael Benjamin Wolfe, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.

3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in

1 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

2 A professionalism program taken after the acts that gave rise to the charges in the
3 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
4 or its designee, be accepted towards the fulfillment of this condition if the program would have
5 been approved by the Board or its designee had the program been taken after the effective date of
6 this Decision.

7 Respondent shall submit a certification of successful completion to the Board or its
8 designee not later than 15 calendar days after successfully completing the program or not later
9 than 15 calendar days after the effective date of the Decision, whichever is later.

10 4. PSYCHIATRIC EVALUATION. At the Board's discretion, and on whatever
11 periodic basis that may be required by the Board or its designee, Respondent shall undergo and
12 complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-
13 appointed board-certified psychiatrist, who shall consider any information provided by the Board
14 or its designee and any other information the psychiatrist deems relevant, and shall furnish a
15 written evaluation report to the Board or its designee. Respondent shall cooperate fully with any
16 evaluation, and shall pay the cost of all psychiatric evaluations and psychological testing.
17 Respondent shall comply with all restrictions or conditions recommended by the evaluating
18 psychiatrist within 15 calendar days after being notified by the Board or its designee.

19 5. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
20 days of the effective date of this Decision, Respondent shall provide to the Board the names,
21 physical addresses, mailing addresses, and telephone numbers of any and all employers and
22 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
23 worksite monitor, and Respondent's employers and supervisors to communicate regarding
24 Respondent's work status, performance, and monitoring.

25 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
26 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
27 privileges.

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1 6. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
2 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
3 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
4 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
5 make daily contact with the Board or its designee to determine whether biological fluid testing is
6 required. Respondent shall be tested on the date of the notification as directed by the Board or its
7 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
8 any time, including weekends and holidays. Except when testing on a specific date as ordered by
9 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
10 basis. The cost of biological fluid testing shall be borne by the Respondent.

11 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
12 During the second year of probation and for the duration of the probationary term, up to five (5)
13 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no
14 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
15 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
16 of random tests to the first-year level of frequency for any reason.

17 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
18 approved in advance by the Board or its designee, that will conduct random, unannounced,
19 observed, biological fluid testing and meets all of the following standards:

- 20 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
21 Association or have completed the training required to serve as a collector for the United
22 States Department of Transportation.
- 23 (b) Its specimen collectors conform to the current United States Department of
24 Transportation Specimen Collection Guidelines.
- 25 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
26 by the United States Department of Transportation without regard to the type of test
27 administered.
- 28 (d) Its specimen collectors observe the collection of testing specimens.

1 (e) Its laboratories are certified and accredited by the United States Department of Health
2 and Human Services.

3 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
4 of receipt and all specimens collected shall be handled pursuant to chain of custody
5 procedures. The laboratory shall process and analyze the specimens and provide legally
6 defensible test results to the Board within seven (7) business days of receipt of the
7 specimen. The Board will be notified of non-negative results within one (1) business day
8 and will be notified of negative test results within seven (7) business days.

9 (g) Its testing locations possess all the materials, equipment, and technical expertise
10 necessary in order to test Respondent on any day of the week.

11 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
12 for the detection of alcohol and illegal and controlled substances.

13 (i) It maintains testing sites located throughout California.

14 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
15 computer database that allows the Respondent to check in daily for testing.

16 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
17 access to drug test results and compliance reporting information that is available 24 hours a
18 day.

19 (l) It employs or contracts with toxicologists that are licensed physicians and have
20 knowledge of substance abuse disorders and the appropriate medical training to interpret
21 and evaluate laboratory biological fluid test results, medical histories, and any other
22 information relevant to biomedical information.

23 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
24 while practicing, even if the Respondent holds a valid prescription for the substance.

25 Prior to changing testing locations for any reason, including during vacation or other travel,
26 alternative testing locations must be approved by the Board and meet the requirements above.

27 The contract shall require that the laboratory directly notify the Board or its designee of
28 non-negative results within one (1) business day and negative test results within seven (7)

1 business days of the results becoming available. Respondent shall maintain this laboratory or
2 service contract during the period of probation.

3 A certified copy of any laboratory test result may be received in evidence in any
4 proceedings between the Board and Respondent.

5 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
6 administered to himself or herself a prohibited substance, the Board shall order Respondent to
7 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
8 medicine or providing medical services. The Board shall immediately notify all of Respondent's
9 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
10 provide medical services while the cease-practice order is in effect.

11 A biological fluid test will not be considered negative if a positive result is obtained while
12 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
13 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

14 After the issuance of a cease-practice order, the Board shall determine whether the positive
15 biological fluid test is in fact evidence of prohibited substance use by consulting with the
16 specimen collector and the laboratory, communicating with the licensee, his or her treating
17 physician(s), other health care provider, or group facilitator, as applicable.

18 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
19 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

20 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
21 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
22 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been
23 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

24 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
25 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
26 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
27 any other terms or conditions the Board determines are necessary for public protection or to
28 enhance Respondent's rehabilitation.

1 7. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
2 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
3 prior approval, the name of a substance abuse support group which he or she shall attend for the
4 duration of probation. Respondent shall attend substance abuse support group meetings at least
5 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance
6 abuse support group meeting costs.

7 The facilitator of the substance abuse support group meeting shall have a minimum of three
8 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
9 or certified by the state or nationally certified organizations. The facilitator shall not have a
10 current or former financial, personal, or business relationship with Respondent within the last five
11 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
12 the same facilitator does not constitute a prohibited current or former financial, personal, or
13 business relationship.

14 The facilitator shall provide a signed document to the Board or its designee showing
15 Respondent's name, the group name, the date and location of the meeting, Respondent's
16 attendance, and Respondent's level of participation and progress. The facilitator shall report any
17 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
18 or its designee, within twenty-four (24) hours of the unexcused absence.

19 8. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
20 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or
21 its designee for prior approval as a worksite monitor, the name and qualifications of one or more
22 licensed physician and surgeon, other licensed health care professional if no physician and
23 surgeon is available, or, as approved by the Board or its designee, a person in a position of
24 authority who is capable of monitoring the Respondent at work.

25 The worksite monitor shall not have a current or former financial, personal, or familial
26 relationship with Respondent, or any other relationship that could reasonably be expected to
27 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
28 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite

1 monitor, this requirement may be waived by the Board or its designee, however, under no
2 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

3 The worksite monitor shall have an active unrestricted license with no disciplinary action
4 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
5 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
6 by the Board or its designee.

7 Respondent shall pay all worksite monitoring costs.

8 The worksite monitor shall have face-to-face contact with Respondent in the work
9 environment on as frequent a basis as determined by the Board or its designee, but not less than
10 once per week; interview other staff in the office regarding Respondent's behavior, if requested
11 by the Board or its designee; and review Respondent's work attendance.

12 The worksite monitor shall verbally report any suspected substance abuse to the Board and
13 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
14 substance abuse does not occur during the Board's normal business hours, the verbal report shall
15 be made to the Board or its designee within one (1) hour of the next business day. A written
16 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
17 any other information deemed important by the worksite monitor shall be submitted to the Board
18 or its designee within 48 hours of the occurrence.

19 The worksite monitor shall complete and submit a written report monthly or as directed by
20 the Board or its designee which shall include the following: (1) Respondent's name and
21 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
22 the worksite monitor's license number, if applicable; (4) the location or location(s) of the
23 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
24 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
25 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
26 lead to suspected substance abuse by Respondent. Respondent shall complete any required
27 consent forms and execute agreements with the approved worksite monitor and the Board, or its
28 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

1 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
2 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
3 approval, the name and qualifications of a replacement monitor who will be assuming that
4 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
5 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
6 monitor, Respondent shall receive a notification from the Board or its designee to cease the
7 practice of medicine within three (3) calendar days after being so notified. Respondent shall
8 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
9 responsibility.

10 9. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING
11 LICENSEES . Failure to fully comply with any term or condition of probation is a violation of
12 probation.

13 A. If Respondent commits a major violation of probation as defined by section
14 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
15 one or more of the following actions:

16 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
17 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
18 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
19 order issued by the Board or its designee shall state that Respondent must test negative for at least
20 a month of continuous biological fluid testing before being allowed to resume practice. For
21 purposes of determining the length of time a Respondent must test negative while undergoing
22 continuous biological fluid testing following issuance of a cease-practice order, a month is
23 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
24 notified in writing by the Board or its designee that he or she may do so.

25 (2) Increase the frequency of biological fluid testing.

26 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
27 other action as determined by the Board or its designee.

28 B. If Respondent commits a minor violation of probation as defined by section

1 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
2 one or more of the following actions:

- 3 (1) Issue a cease-practice order;
- 4 (2) Order practice limitations;
- 5 (3) Order or increase supervision of Respondent;
- 6 (4) Order increased documentation;
- 7 (5) Issue a citation and fine, or a warning letter;
- 8 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
9 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
10 Regulations, at Respondent's expense;
- 11 (7) Take any other action as determined by the Board or its designee.

12 C. Nothing in this Decision shall be considered a limitation on the Board's authority
13 to revoke Respondent's probation if he or she has violated any term or condition of probation. If
14 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
15 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
16 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
17 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
18 is final, and the period of probation shall be extended until the matter is final.

19 10. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
20 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
21 Chief Executive Officer at every hospital where privileges or membership are extended to
22 Respondent, at any other facility where Respondent engages in the practice of medicine,
23 including all physician and locum tenens registries or other similar agencies, and to the Chief
24 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
25 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
26 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or
27 insurance carrier.

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1 11. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
2 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
3 advanced practice nurses.

4 12. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
5 governing the practice of medicine in California and remain in full compliance with any court
6 ordered criminal probation, payments, and other orders.

7 13. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
8 under penalty of perjury on forms provided by the Board, stating whether there has been
9 compliance with all the conditions of probation.

10 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
11 of the preceding quarter.

12 14. GENERAL PROBATION REQUIREMENTS.

13 Compliance with Probation Unit

14 Respondent shall comply with the Board's probation unit.

15 Address Changes

16 Respondent shall, at all times, keep the Board informed of Respondent's business and
17 residence addresses, email address (if available), and telephone number. Changes of such
18 addresses shall be immediately communicated in writing to the Board or its designee. Under no
19 circumstances shall a post office box serve as an address of record, except as allowed by Business
20 and Professions Code section 2021(b).

21 Place of Practice

22 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
23 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
24 facility.

25 License Renewal

26 Respondent shall maintain a current and renewed California physician's and surgeon's
27 license.

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1 Travel or Residence Outside California

2 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
3 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
4 (30) calendar days.

5 In the event Respondent should leave the State of California to reside or to practice,
6 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
7 departure and return.

8 15. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
9 available in person upon request for interviews either at Respondent's place of business or at the
10 probation unit office, with or without prior notice throughout the term of probation.

11 16. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
12 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
13 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
14 defined as any period of time Respondent is not practicing medicine as defined in Business and
15 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
16 patient care, clinical activity or teaching, or other activity as approved by the Board. If
17 Respondent resides in California and is considered to be in non-practice, Respondent shall
18 comply with all terms and conditions of probation. All time spent in an intensive training
19 program which has been approved by the Board or its designee shall not be considered non-
20 practice and does not relieve Respondent from complying with all the terms and conditions of
21 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
22 on probation with the medical licensing authority of that state or jurisdiction shall not be
23 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
24 period of non-practice.

25 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
26 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
27 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
28 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model

Disciplinary Orders and Disciplinary Guidelines” prior to resuming the practice of medicine.

Respondent’s period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term. Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

17. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent’s certificate shall be fully restored.

18. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

19. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent’s request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent’s wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the

1 application shall be treated as a petition for reinstatement of a revoked certificate.

2 20. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
3 with probation monitoring each and every year of probation, as designated by the Board, which
4 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
5 California and delivered to the Board or its designee no later than January 31 of each calendar
6 year.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
9 discussed it with my attorney, Jane Luciano. I understand the stipulation and the effect it will
10 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
11 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
12 Decision and Order of the Medical Board of California.

13
14 DATED: 3/6/19

Michael B Wolfe
15 MICHAEL BENJAMIN WOLFE, M.D.
Respondent

16 I have read and fully discussed with Respondent Michael Benjamin Wolfe, M.D. the terms
17 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
18 Order. I approve its form and content.

19 DATED: 3/8/19

Jane Luciano
20 JANE LUCIANO
Attorney for Respondent

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ENDORSEMENT

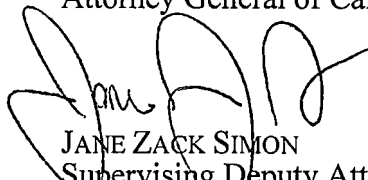
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

3/8/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California



JANE ZACK SIMON
Supervising Deputy Attorney General
Attorneys for Complainant

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EXHIBIT A

1 XAVIER BECERRA
2 Attorney General of California
3 JANE ZACK SIMON
4 Supervising Deputy Attorney General
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 26 2018
BY K. Voong ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2016-028734

MICHAEL BENJAMIN WOLFE, M.D.
50 Saratoga Avenue, #409
Santa Clara, CA 95051-7387

A C C U S A T I O N

Physician's and Surgeon's Certificate
No. A63089,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On July 18, 1997, the Medical Board issued Physician's and Surgeon's Certificate Number A63089 to Michael Benjamin Wolfe, M.D. (Respondent). The Physician's and Surgeon's Certificate is renewed and current with an expiration date of November 30, 2018. Prior disciplinary action was taken against the certificate as follows: On November 9, 2009 an Accusation was filed against Respondent, and on July 14, 2010 a Decision became effective which read: Revoked, stayed, five years probation with terms and conditions.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated:

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code requires the Board to take action against any licensee who is charged with unprofessional conduct, defined to include “[v]iolating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.”

6. Section 2236 of the Code provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct

7. Section 2239 of the Code states:

“(a) The use of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

8. Section 315 of the Code provides for the establishment of uniform standards to be imposed in dealing with cases involving substance-abusing licensees.

9. Title 16, California Code of Regulations, section 1361 *et seq.* requires the Board to use duly adopted Uniform Standards for Substance-Abusing Licensees in cases involving substance abusing licensees.

1 10. Section 802.1 of the Code requires a physician and surgeon to report to the
2 Medical Board a felony or misdemeanor conviction within 30 days of the conviction

3 **PRIOR CONVICTIONS AND DISCIPLINARY ACTION**

4 11. On September 27, 2007, Respondent was convicted in Santa Clara County Superior
5 Court of a violation of Vehicle Code section 23103(a), Reckless Driving, a misdemeanor. The
6 conviction was the result of an April 18, 2007 arrest for Driving Under the Influence (DUI) after
7 Respondent's preliminary alcohol screening test registered a reading of .09%. Pursuant to a
8 provision of the Vehicle Code whereby the prosecution may offer a plea to Reckless Deriving in
9 satisfaction of or in substitute for an original charge of DUI, the court minutes reflect that the
10 prosecution entered a statement on the record indicating that alcohol had been consumed in
11 connection with the offense.

12 12. On April 15, 2009, Respondent was convicted in Santa Clara County Superior Court
13 of a violation of Vehicle Code section 23152(b), Driving with a Blood Alcohol Reading of .08 or
14 Greater. The conviction was the result of an October 28, 2008 arrest for DUI, in which
15 Respondent's blood alcohol level was measured at .18%.

16 13. On November 9, 2009, an Accusation was filed in Case No. 03-2008-195877,
17 charging Respondent with cause for discipline based on unprofessional conduct arising out of the
18 two criminal convictions involving the consumption of alcohol. In a Decision and Order effective
19 July 14, 2010, Respondent's certificate was revoked, stayed, subject to five years probation with
20 terms and conditions including abstaining from drugs and alcohol, biological fluid testing and
21 participation in psychotherapy.

22 14. On September 28, 2012, Respondent submitted a Petition for Penalty Relief,
23 requesting early termination of probation. A hearing was held, and thereafter the Board adopted a
24 Decision in Case No. 26-2012-226819, granting Respondent's Petition effective October 31,
25 2013. The Decision contained findings that Respondent had complied with the terms and
26 conditions of his probation, and that he stated he "recognized that alcohol can lead me to make
27 poor decisions and I have no plans to drink again regardless of whether I'm being monitored."
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1 Respondent presented evidence that he had changed his lifestyle and addressed his alcohol use
2 issues.

3 **FIRST CAUSE FOR DISCIPLINE**

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5 **(Unprofessional Conduct: Criminal Convictions/Excessive
or Dangerous Use of Alcohol)**

6 15. Respondent is subject to disciplinary action under sections 2234, and/or 2236, and/or
7 2239 in that Respondent engaged in unprofessional conduct, was convicted of a crime, and has a
8 demonstrated history of excessive and dangerous use of alcohol.

9 16. On December 11, 2016 at approximately 10:45 p.m., Respondent was pulled over by
10 the California Highway Patrol because his car lights were not on. The officer recognized signs of
11 intoxication, such as the odor of alcohol, red and watery eyes, slow and slurred speech and an
12 unsteady gait. A breathalyzer test measured Respondent's blood alcohol level at .16%.

13 17. Respondent was arrested and charged in Santa Clara County Superior Court with two
14 misdemeanor charges: 1) Vehicle Code (VC) section 23152(a) – Driving Under the Influence of
15 Drugs and/or Alcohol; 2) VC section 23152(b) – Driving with a Blood Alcohol Level of 0.08% or
16 More. Enhancements were alleged for driving with a blood alcohol level of .15% or more, and for
17 Respondent's two previous alcohol related driving convictions. On July 28, 2017, Respondent
18 pled no contest to and was convicted of violating Vehicle Code section 23152(b).

19 18. Respondent's July 28, 2017 criminal conviction driving under the influence with a
20 blood alcohol level twice the legal limit is substantially related to the qualifications, functions and
21 duties of a physician and surgeon. Moreover, Respondent's three separate criminal convictions
22 involving driving and the use of alcohol, along with the high blood alcohol level in the most
23 recent incident, reflect the use of alcohol in a manner dangerous to himself or others. As such,
24 Respondent is subject to discipline for unprofessional conduct pursuant to sections 2234, and/or
25 2236, and/or 2239 of the Code.

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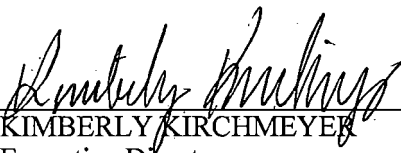
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1 4. Taking such other and further action as deemed necessary and proper.

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3 DATED: November 26, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant